IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISC. APPLICATION NO. 233 OF 2004.

Mr. Rahmat Khan,
son of Mr. Mohammed Khand,
resident of Fatorda, Margao,
Goa, through his next friend
Mohd. Jameruddin Khan,
r/o Alto Betim, Bardez, Goa. .... Applicant.

Versus

State of Goa,
Through Public Prosecutor,
Panaji, Goa. .... Respondent.

Shri S.D. Lotlikar, Senior Advocate with Shri R.S. Sardessai, Advocate for the Applicant.

Shri S.N. Sardessai, Public Prosecutor for the State/Respondent.

CORAM: N. A. BRITTO, J.

DATE: 6th December, 2004.

O R D E R:

The applicant herein is accused in Crime No.293/2004 of Margao Town Police Station who was arrested on 14.9.2004 on the allegation that he caused the death of a fellow watchman by name Mohammad Abdulla son of Mohd. Abdul Sattar and since then has been in custody.

2. The applicant's application for bail was rejected by the learned Sessions Judge by Order dated 30.9.04 and since then the investigation has been completed and the filing of the charge-sheet is awaited.

3. The applicant and the said deceased were both residing in the same place and were working for Cobra Security Services and at the relevant time were entrusted to look after the security of the bungalow of Policarpo Vaz and the latter who had seen the deceased on duty at 23.00 hrs. of 11.9.04 found the deceased dead on the next day at about 6.30 to 6.45 a.m. with a pick-axe lying by the side. The said Policarpo then informed the police who after sending the dead body of the said Mohd. Abdulla for autopsy came to the conclusion that the death was homicidal. In fact, the autopsy report shows that the deceased died due to haemorrhagic shock as a result of transaction to the left external jagular vein which was fatal at the time of death.

4. The learned Sessions Judge who rejected the application for bail by his Order dated 30.9.2004 came to the conclusion that there was prima facie evidence on record to show that the accused was on enemical terms with the deceased and had planned to kill him. The learned Sessions Judge also found that the police had also attached the blood stained pant of the accused and since the offence was of serious nature and the investigations were at a preliminary stage, the learned Sessions Judge proceeded to reject the application.

5. Shri Lotlikar, the learned Senior Counsel has submitted that the accused is being detained only on suspicion, the said suspicion arising from the fact that there was enemity between the deceased and the accused and a blood stained pant was attached at the instance of the accused. Shri Lotlikar

therefore has submitted that this is a fit case to admit the accused to bail.

6. Shri Sardessai, the learned Public Prosecutor has submitted that there are a number of circumstances which unerringly point out to the involvement of th accused to the murder of the deceased and therefore this is not a fit case to admit the accused to bail.

7. The Supreme Court in the case of **Kalyan Chandra Sarkar v. Rajesh Ranjan @ Pappu Yadav and anr. (2004(3) Crimes 63)** has reiterated the factors which a Court is required to consider at the time of granting bail to an accused, some of which are (i) gravity of accusation; (ii) severity of punishment in case of conviction, (iii) nature of supporting evidence; and (iv) reasonable apprehension of tampering with the witnesses or threat to the complainant. The Supreme Court has also reiterated the principle that the provisions of Section 437(1)(1) of the Code of Criminal Procedure, 1973 are also required to be read into Section 439 at the time of granting bail to the accused.

8. I have perused the case papers of investigation. I am unable to agree with Shri Lotlikar that the accused has been arrested and detained only on the basis of suspicion based on the above two circumstances mentioned by him. On the contrary I am inclined to agree with Shri Sardessai that the evidence collected thus far prima facie unerringly point out that it is the accused who has committed the murder of the deceased.

9. The statements recorded in the course of the investigation show that

there was strained relationship between the accused and the deceased for reasons more than one. There is a statement to indicate that one witness was approached by the accused more than once for his help to kill the deceased. There is also a statement to show that the accused and the deceased were last seen together at about 6.30 hrs. or so on 11.9.04. There is also a panchanama which shows that a blood stained uniform pant of the accused was recovered at his instance. Although there are no eye witnesses to incident of murder of the deceased, the investigation agency has been able to collect sufficient prima facie evidence to connect the accused with the murder of the deceased and the said circumstances which are reflected through the statements of the witnesses/panchanama unerringly point out that the accused is involved in a grave offence for which the punishment would be severe. In such a situation the Court is bound to presume that no amount of bail would secure the presence of the accused at the trial.

10. In my view, this is not a fit case to admit the accused to bail at this stage. Application for bail therefore is hereby rejected.

N. A. BRITTO, J.

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